

Minutes
Plant Variety Protection Board Meeting
October 6, 2005

National Agricultural Library (NAL)
Beltsville, Maryland 20705 USA

Board Members attending (with affiliation):

Kelly Book, Texas Department of Agriculture
Peter Bretting, USDA, Agricultural Research Service
Leticia Cabrera, University of Texas at Brownsville
Harry Collins, Delta and Pine Land Company
Richard (Dick) Crowder, American Seed Trade Association
Carl Johnson, Rice Experiment Station
Salomon Montano, New Mexico farmer
Bruce Morrissey, Dupont de Nemours Co.
Jorge Mosjidis, Auburn University
Larry Svajgr, Indiana Crop Improvement Association
Katherine (Kathy) White, Wayne State University Law School
Walter Wiles, Southern University

USDA and AMS staff:

Bill Hawks Under Secretary for Marketing and Regulatory Programs
Lloyd Day, Administrator, USDA/AMS
Kenneth Clayton, Associate Administrator, USDA/AMS
Robert Epstein, Deputy Administrator, USDA/AMS/Science and Technology
Alan Post, Associate Deputy Administrator, USDA/AMS/Science and Technology
Robert Ertman, USDA/Office of the General Counsel
Ruffino Hurtado, AMS Public Affairs Office
Jim Falk, Microbiologist, USDA/AMS/Technical Services Branch
Alex Williams, USDA/AMS/Administrative Office
Annette White, USDA/AMS/Administrative Office
June Blalock, USDA ARS Office of Technology Transfer

Plant Variety Protection staff:

Gwen Adams, PVP Analyst
Alan Atchley, Examiner
Lidia Carrera, Examiner
Robin Davis, Examiner
Mark Hermeling, Quality Assurance Examiner
Sheila Littleton, PVP Analyst
James Mantooth, Associate Examiner
Janice Strachan, Examiner
Jeff Strachan, Examiner
Bernadette Thomas, Information Technology Specialist

Beretha Thornton, Examiner
Leigh Wiltison, PVP Assistant
Paul Zankowski, Commissioner

Visitors:

Sign Language Interpreters

Opening remarks were made by Bill Hawks, Lloyd Day, and Robert Epstein. Bill Hawks was commended for his support to the U.S. seed industry.

Dr. Epstein indicated that he would be traveling to China and would represent the Plant Variety Protection Office (PVPO). The Board suggested that all the forms of intellectual property protection utilized in the U.S. should be presented to the Chinese (i.e. Plant Patents, Utility Patents, Trade Secrets, and Plant Variety Protection),

The Board also suggested the topic of the long term financial status and the productivity of the PVPO be added to the agenda.

The meeting agenda was adopted. The Board approved the minutes of the May 2004 meeting.

A brief presentation was made to the Board members by Annette White on filling in travel vouchers.

Reports:

Overview of Application Contents and Examination Procedures. Janice Strachan.

The organizational structure of the PVPO within the Agricultural Marketing Service was presented. Seed reproduced, tuber propagated, and F1 hybrids are eligible for PVP. The number of incoming PVP applications was greatest in 1999. The agricultural (corn, soybean, cotton, etc.) crops have dominated amongst incoming applications followed by vegetables, tuber, and ornamental crops.

The criteria for Plant Variety Protection – New, Distinct, Uniform, and Stable (DUS) were discussed relative to the PVPO application, exhibits, and supporting information. The processing and criteria for PVP examination were also discussed. The processing time for PVP applications is less than one year for about 23% of applications. The efficiency of application processing is most dependant on the quality of the applications and whether additional information is required from the PVP applicant. The Board suggested that incentives be put into place to produce better quality PVP applications – so as to reward the quality application and tax the inefficient.

The rights granted for U.S. PVP were discussed in addition to the farmers and research exemptions. The PVP certificate holder's responsibilities including seed replenishment, seed bag labeling, and change of address. The Board suggested that the PVP include the labeling provisions for PVP on the website under the Frequently Asked Question section.

PVP Accomplishments from May 2004 to September 2005. Paul Zankowski. The PVPO has 13 full time positions; one examiner was promoted from an associate position, one examiner was hired from outside, and a PVP analyst came from the Tobacco program. A PVP computer assistant departed and an Examiner is on long term leave. The PVP staff relocated

from the 4th to the 14th floor of the National Agricultural Library (NAL) building from November 2004 to February 2005 so that sprinklers could be added to the existing office space.

A crop distribution breakdown was provided of the seven examiners workloads. In FY2005 the PVPO received 351 new applications with 317 applications issued, abandoned, withdrawn or otherwise disposed of during the year. The PVPO backlog increased from 620 applications at the end of FY2004 to approximately 705 applications at the end of FY2005. Approximately 66% of PVP applications recommended for protection passed the Quality Assurance (QA) on the first review and 55% of the applications returned for corrections were fixed within several weeks/months. The Board asked if denied, abandoned, or otherwise terminated PVP applications were reviewed for QA – they are not.

A supplemental fee increase occurred on June 20, 2005 and is expected to generate \$95,000 in new revenue beginning in FY2005. This increase raised the certificate issuance fee by \$250 to cover the cost of electronic conversion and archiving of issued PVP certificates. The increase also included fees for administrative services for which users were not charged such as requests for replenishment of seed low in germination and the submission of new application data after notice of allowance. The Board asked if the increased certificate issuance fee will disappear after all certificates are scanned or will it continue. It was explained that this fee would continue in order to cover continuing expenses for electronic storage and archiving. The Board also recommended that the PVPO scan any recently issued certificate and the 20 most recently issued certificates of the top 20 crops - as example applications with the lowest priority being the expired certificates.

A 20% general fee increase will occur on October 17 2005. The typical total fee for a PVP certificate will be \$5,150. It has been projected that this increase will stabilize the PVPO's trust fund into FY2007. Along with this fee increase the procedures of the office were change to permit seed samples to be submitted directly to the public repository instead of the PVPO.

Procedure changes with the PVPO were discussed including the acceptance of credit card payments for many fees beginning in May 2005 and the direct deposit of seed beginning in the Fall 2005 - so that PVP applicants will ship seed directly to the National Center for Genetic Resources Preservation (NCGRP). The PVPO has created 3 new forms to manage these procedure changes including the ST471 (Request for Services – Credit Card Form), ST472 (NCGRP deposit form for Plant Variety Protection voucher sample) and ST473 (Recordation Form to record ownership, contact information, and any encumbrances against PVP Certificates).

PVP Financial Summary. Alex Williams. The operational costs of the PVPO for FY2005 through 2007 had projected losses to the Trust Fund of \$195,000 in FY2006 and \$127,000 in FY2007 based on 300 and 325 incoming PVP applications, respectively. If the PVPO continued to take in about 350 applications during each of these years it would almost break even.

For the FY2005 expenditures - approximately 72% of expenses were due to salaries/benefits, 10% for rent, and 8% for contracts. For FY2005 income approximately 87% was from search/examination fees and 10% from the certification fee.

The planned FY2006 budget had \$1.7 million in revenue and \$1.9 million in obligations, with salaries/benefits of approximately \$1.3 million. PVPO expenditure increase of \$442,000 in FY2006 was due primarily to the following increases - \$274,000 in salaries/benefits, \$65,000 in

agency overhead costs, \$56,000 in rents, and \$25,000 increase in travel.

The trust fund balance trend had the fund balance decreasing from \$1.55 million in FY2005 to \$1.22 million in FY2007. Projected revenues are based on receiving 300 PVP applications.

The Board questioned PVPO operational costs projections for FY 2006 and 2007. Operational costs include employee salaries/benefits, rent, supplies, travel, contracts, and Agency and S&T overhead and Greenbook charges. Agency and S&T overhead charges are administrative/operational costs for Agency and program personnel that assist PVP in carrying out its mission. Greenbook charges are departmental charges, which are distributed to USDA agencies, and all programs within these agencies. The PVPO has very little control over these actual costs. When expenses exceed income, trust fund reserves are used to maintain the program. Projections indicate a possible loss for FY 2006. If this occurs, a general fee increase will be necessary in FY 2007 to cover current program obligations for administrative (operating costs) and information technology needs. Unfunded mandates and requirements placed on the office are not reflected as a line item in the cost of doing business.

The Board commented that they would like to see and analyze the actual Greenbook charges (projected if necessary), and the effects they will have on current and future PVPO budgets and budget plans, well in advance of Board meetings. The Board also suggested that the quality of financial data needs to improve before the Board can present information that is beneficial to PVPO to the Secretary of Agriculture and any legislative committees to be considered for potential appropriations.

PVP E-Business and Database Migration Plans. Bernadette Thomas. The objectives of the PVPO database migration plan were presented. The PVPO worked with a contractor to determine the requirements for a new database and a design plan. The database conversion was not completed due to an estimated cost of \$1.3 million for the conversion. The Board request more information especially regarding costs, actual services, and products - before a recommendation can be made on how to proceed with the database program.

The PVPO has developed 3 new forms for credit card services, direct seed deposit to National Center for Genetic Resources Preservation, and Recordation of Security Interests, Change in Ownership, etc. Additionally, the PVPO has made 36 Exhibit C (objective variety description) forms available in pdf format on the website.

The PVPO has posted 971 expired PVP certificates that were scanned into pdf format to the PVP website. The images have been proofed for scan quality and bookmarked into Certificate, Application, Exhibit A, Exhibit B, Exhibit C, Exhibit D (if any), Exhibit E, Exhibit F (if any), and Assignment (if any). Approximately 656 expired certificates remain to be scanned and 4,827 issued certificates need to be scanned. The Board suggested the PVPO prioritize the scanning project in the following order: 1) any recent issued PVP certificate should be scanned, 2) at least 20 PVP certificates of the incoming 20 PVP applications should be scanned as example templates on how to file for PVP, and 3) expired and the oldest to issue PVP certificates should have the lowest priority for scanning. Additionally the PVPO is working with the National Agricultural Library (NAL) to increase usefulness and availability of this scanned information.

The PVPO is working with the Agricultural Marketing Service Information Technology group to develop an internet based system for credit card payments. When this is finalized

customers will be allowed to credit card pay fees on the internet for new applications, copies of records, and certificate fees. Transactions will be processed by Mellon Bank and the U.S. Treasury and the PVPO will continue to accept checks and money orders for payment.

The PVPO is currently processing credit card payments manually using the Collection Control Panel at Pay.gov. These requests are sent by fax and processed by a PVP staff member.

Use of Molecular Data in DUS determination and the Role of the National Science Laboratory. Paul Zankowski. The PVPO has accepted molecular data submitted by applicants that differentiates a new variety from a few older varieties that are retrieved by the PVPO computer search or that establishes that the applicants variety is different from the most similar comparison varieties.

The criteria that the PVPO uses for the evaluation of molecular data are that molecular methods must 1) be treated the same as other methods used to establish distinctness, 2) meet the quality controls in place for appropriate supporting evidence, and 3) use published procedures and reagents that are available to everyone who wants to perform the tests (no proprietary reagents or procedures can be accepted if the applicant wants to prove distinctness). The molecular data differences need to be uniform and stable - the tests need to be done on more than one individual, in two or more generations. Also repeated molecular tests need to show that the differences exist between all individuals of the varieties and that the differences do not change over time.

Potential problems with the use of molecular markers include 1) the ability to distinguish a new variety from all previously existing varieties (older varieties may not have a molecular profile) and 2) older varieties may not be sufficiently uniform and stable to have the profile be meaningful. Morphological data will continue to be necessary to differentiate older varieties from newer varieties unless all older varieties are profiled and that profile is made available.

A draft procedure was presented that coordinates molecular testing activity between 1) the PVP applicant, 2) the USDA National Science Laboratory (NSL) in Gastonia, North Carolina, and 3) the PVPO.

The Board questioned the the proposed project of using DNA analyses and the National Science Lab— suggesting that this was driven by groups and individuals other than PVP applicants. It was commented that there is no evidence which can show that customers desire or would benefit from the development of a system to have the NSL perform any analyses on their varieties. It was agreed that DNA marker analysis may be a useful tool. However, the opinion that a single base pair difference between varieties could provide the evidence necessary to prove distinctness was considered troublesome by some Board members.

Topics Brought Forward by Board Members and Other Issues Paul Zankowski.

Board members brought up these discussion topics: 1) The Office of Inspector General's report on the Controls over Plant Variety Protection and Germplasm Storage, 2) Molecular Markers and DUS testing, 3) the PVPO Budget, 4) the recent fee increases and where we go from here, and PVP Application Backlogs.

The summary of the issues of the board at the end of the meeting were:

- 1) The PVPO [personnel] need to talk with and listen to customers more than they currently are.
- 2) If the Office of General Counsel (OGC) says "we can't do it" – instead have them tell what needs to happen in order to get it done. The Board commented that it is a waste of valuable time to receive OGC opinions which inhibit progress and do not offer advice on how to move forward.
- 3) The PVPO needs to consider having more than one meeting per year, using conference calls if necessary. Agenda topics are not being concluded within the term limits of Board members, and continuity is lacking. The Board needs to have the members able to follow agenda items to conclusion.
- 4) There is no time on Board agendas provided for the industry needs. Agenda items are decided upon in advance by PVP staff and too often are comprised of subjects that are not the highest priority items for industry. The Board must be involved in setting agenda items.
- 5) Spending any money on things that are not clearly outlined, explained, itemized and prioritized will not be supported by the Board. The Board should have all financial information far enough in advance of the meetings to make well informed decisions.

Future Program Activities of the PVP. Paul Zankowski. The top 20 incoming PVP applications crop kinds in order were Corn, Soybean, Wheat, Cotton, Lettuce, Potato, Tall Fescue, Kentucky Bluegrass, Perennial ryegrass, Pea, Field Pea, Bean, Rice, Field Bean, Barley, Peanut, Rape, Oats, Pepper, and Sorghum. These crops comprised 85% of the incoming PVP applications over the past 5 years. The PVP certificate issue trends over the past 5 years had between approximately 230 to 500 certificates issued each year with the average number of days to issue of about 1,030 days.

The PVP backlog of approximately 700 applications has about 14% of the applications from before FY2003. Major goals for the PVPO are to 1) dispose of all remaining 2000 and 2001 PVP applications, 2) reduce the current backlog by approximately 300 applications, and 3) reduce PVP certificate issuance time to less than 600 days.

E-business goals of the PVPO include internet availability of scanned expired and issued PVP certificates the credit card payment of fees, making more electronic forms available, and to provide a system for electronic application filing.

Physical issues were discussed regarding the location of the PVPO and the FY2006 60% rent increase for the current office location within the National Agricultural Library (NAL) building. The PVPO had planned to relocate to a modern and less expensive professional building in the summer of 2004 but it was determined that this relocation would be contrary to the USDA Space Management Policy (Departmental regulation # 1620-002). Loss of workable hours has occurred at the current location due to frequent fire alarms, building closing, power

outages, and loss of internet (T1 line) service. During this “down time” many of the PVPO users cannot use the database, access any documents on the server, access email, or access the internet

The PVPO staff will work on increasing customer service by presentations at stakeholder meetings, working with applicants, and by decreasing certificate issuance lag time.

Meeting adjourned.

Summary List of Recommendations by the Board:

- 1) Restore financial health of the PVPO. The Board needs to understand the financial details. The Board needs to be supplied with all of the details involving capitol vs. operating costs.
- 2) The fee structure should be linked to items that will help improve productivity, and that linking should start with the industry's role in PVP.
- 3) Turn around time of applications: Factors involving turn around time should be analyzed, not just measured without detail, and it should be determined what needs to be done to improve it.
- 4) Systems: (database conversion); we need to better identify what the PVPO needs and what it can afford to best serve the interests of the industry [its customers].
- 5) Provide the Board with whatever it needs to request appropriated funding from Capitol Hill, especially for special projects such as scanning and new computer systems.

Other Issues:

- 1) Each Board member should be supplied with a listing of all the current Board members' business contact information.
- 2) The Board should meet by conference call in January or February of 2006, with a well documented agenda posted in advance.